

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARK RAHNER,

Plaintiff,

v.

THE SEATTLE TIMES COMPANY, a
Delaware corporation,

Defendant.

No. 2:12-cv-00880

DECLARATION OF SANDRA
HOLLENBECK IN SUPPORT OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

I, Sandra Hollenbeck, declare as follows:

1. I make the statements in this declaration based on personal knowledge and my review of the business records of The Seattle Times that are kept in the usual course of business, and am competent to testify to the matters stated herein.

2. I am currently employed by The Seattle Times Company as Human Resources/Employee Relations Manager, a position I have held since in November 2005.

3. In my role, I am responsible for recruitment and hiring; company training initiatives; and employee relations issues including performance management and

1 accommodation requests. When needed, I have also handled workers comp claims and leave
2 requests including FMLA.

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4 4. STC has an attendance policy that requires employees be at their work stations
5 on time for each scheduled shift, fully able and ready to work. This policy was in place during
6 2009 and 2010. It states that employees must report to their managers if they will be tardy or
7 absent. A true and correct copy of the attendance policy in effect in 2010 is attached as

8 **Exhibit A.**

9 5. I first interacted directly with Mark Rahner in 2010 when he was seeking a
10 medical leave and accommodations. It is my understanding that Mark had chronic fatigue
11 syndrome (CFS). I started communicating with Rahner about his CFS and need for
12 accommodation in August 2010. Prior to this, Rahner had been communicating directly with
13 his editors and the then-Director of Human Resources, Nancy Hawman. Nancy left her role as
14 Director of Human Resources in the summer of 2010.

15 6. When I started communicating directly with Mark Rahner in August 2010, he
16 was on a continuous FMLA leave. He was supposed to work the evening shift upon his return
17 absent some other agreement, proposal, or accommodation.

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19 7. Rahner exhausted his FMLA leave in late October 2010. His naturopath, Dr.
20 Paul Dompe, provided a note releasing him to return to work with an accommodation of a
21 "flexible work assignment that will allow Mark the periodic rest needed to prevent a relapse."
22 The note also said Dr. Dompe did not recommend "night shift reporting as the demands of such
23 an assignment will likely cause relapse of Mark's condition." I was surprised by this last

1 sentence because it was my understanding that Dr. Dompe had previously stated that Mark
2 Rahner could not work morning hours either.

3
4 8. In response to Dr. Dompe's letter, I called Rahner on November 3, 2010. We
5 discussed Dr. Dompe's letter and the evening shift assignment. Rahner reiterated that
6 mornings were tough for him and that he did not wish to return to the evening shift. I asked
7 Rahner if he had any alternatives to propose instead of the evening shift in light of his CFS and
8 inability to report to work in the mornings. He said that he needed a job that had
9 independence, allowed him to come in when he wanted, and did not require a predictable
10 schedule.

11 9. After this call, I talked to Mark Higgins and Suki Dardarian about Rahner's
12 proposal that he work in a job without a predictive schedule. Mark and Suki explained to me
13 why Rahner's proposal was not possible in his role as a GA breaking news reporter. We did
14 not have any GA breaking news reporter positions – morning, day or evening – that did not
15 require adhering to a predictable schedule. Thus, we could not accept Rahner's proposal that
16 he work a non-predictive schedule and have full independence.

17 10. In order to continue the interactive process with Rahner, we provided him a non-
18 FMLA medical leave pending additional information from Dr. Dompe.

19
20 11. I immediately followed up with Dr. Dompe to seek clarification on Rahner's
21 *specific* limitations and the *specific* accommodations he needed to address those limitations.
22 Dr. Dompe responded on or about November 17, 2010. He answered several questions about
23 Rahner and his medical needs. Dr. Dompe stated that the "flexibility" Rahner needed was

1 limited to three 15-minute breaks per 8-hour shift to be taken as needed. Dr. Dompe also stated
2 that there was "[n]o restriction on [Rahner's] work hours," including "the time of day" for
3 Rahner's shift. When I asked about the basis for Dr. Dompe's statement in his October 27,
4 2010 letter that the evening shift could lead to Rahner's relapse, Dr. Dompe responded that he
5 understood that the evening shift "demands sustained and continuous vigilance and does not
6 allow the flexibility necessary to meet Mark's medical needs (i.e. rest breaks at the onset of
7 fatigue)." Based on Dr. Dompe's statements in the questionnaire, I understood that the only
8 accommodation Rahner needed was to receive three 15-minute rest breaks to be taken as
9 needed. As explained above, a true and correct copy of the questionnaire completed by Dr.
10 Dompe is attached here as **Exhibit B**.

11
12 12. Upon receiving Dr. Dompe's answers to STC's questionnaire, I again consulted
13 with Mark Higgins and Suki Dardarian. We determined that STC could provide Rahner the
14 three 15-minute rest breaks to be taken as needed during an eight-hour on the evening shift.

15 13. Around mid-November, Rahner complained that he believed his editor, Mark
16 Higgins, subjected him to a hostile work environment by referring to his dislike of working in
17 the morning and that he assigned him to the evening shift as punishment. My colleague,
18 Michelle McKinnon handled the complaint and response in my absence due to a family
19 emergency. Michelle investigated Rahner's complaint and did not find any evidence that
20 Higgins or other managers in the newsroom treated Rahner in a hostile, unfair or discriminatory
21 manner. During Michelle's communication with Rahner, he continued to object to the evening
22 shift and reiterate his desire for a day shift with full schedule flexibility.
23

1 14. On November 26, 2010, I telephoned Rahner to confirm that, in light of Dr.
2 Dompe's answers to the questionnaire and Dr. Dompe's conclusion Rahner did not require a
3 restriction in his work hours, Rahner would be assigned to the evening shift. I told him STC
4 could and would provide Rahner three 15-minute rest breaks per eight hour shift to be taken as
5 needed. I also told him that STC would like to try having him in the evening shift for a while
6 and then assess how it was working for everyone. Rahner refused this accommodation (and the
7 evening shift) and again insisted that he wanted an assignment that allowed for independence
8 and full flexibility, and that utilized his strengths. I asked him if there was an assignment that
9 existed like the one he described at the time, and he stated that he did not so. I also explained
10 that STC was willing to work with him, but would not create a new assignment or job that did
11 not already exist. A true and correct copy of my notes of that conversation at **Exhibit C**.

12 15. In December 2010, Rahner filed a grievance with his union regarding the
13 decision to move him to the evening shift. STC engaged in the grievance process on December
14 7, 2010 to seek additional input from Rahner about his accommodation needs and to hopefully
15 broker a mutually agreeable solution. During the grievance meeting, Rahner again reiterated
16 his demand for full schedule flexibility during a day shift. His union representative suggested
17 STC create a position for Rahner with an 11 a.m. start time. He did not make any other
18 proposals during the grievance meeting.

19 16. After the grievance meeting, I worked with Suki Dardarian to explore whether
20 STC could create an 11 a.m. shift for a GA breaking news reporter as proposed by Rahner's
21 union rep. Suki explored the possibility and responded that it was not an option. She explained
22
23

1 it was a poor use of very limited reporter resources in Metro and did not work effectively with
2 the daily print deadlines.

3
4 17. On December 17, 2010, I sent Rahner a memo following up on the grievance
5 explaining that STC would not create an 11 a.m. shift because it was not an effective use of
6 Metro's limited resources. I also informed him he would be assigned the evening shift when he
7 returned to work. Also, after the grievance meeting, I informed Rahner that he was expected to
8 show up for work on January 3, 2011. The grievance process ultimately failed and the union
9 did not pursue further remedies.

10 18. Rahner did not show up for his scheduled shift on January 3, 2011. Instead, he
11 sent an email refusing to work the evening shift and suggesting that his blood work showed he
12 was at risk of a "medical emergency" that might threaten a relapse. He also referred to two
13 irrelevant provision of the Collective Bargaining Agreement that he suggested required STC to
14 provide him flexibility to come and go as he pleased. Both provisions were irrelevant as they
15 were referring to reporter job sharing and/or working four ten-hour days a week instead of five
16 eight-hour days a week. A true and correct copy of that email is attached as **Exhibit D**.

17 19. Based on this new assertion of a looming medical emergency, STC again
18 engaged in the interactive process and offered Rahner yet another medical leave. In an email, I
19 also told Rahner: "we remain open to any proposals you may have beyond what we have
20 discussed that might be mutually agreeable." A true and accurate copy of that email is attached
21 as **Exhibit E**. I followed up with Dr. Dompe on January 5, 2011 about Rahner's new assertions
22 of a medical emergency and to seek clarification that Mr. Rahner could work the evening shift
23 with the rest break accommodation in light of Rahner's ongoing insistence that STC has

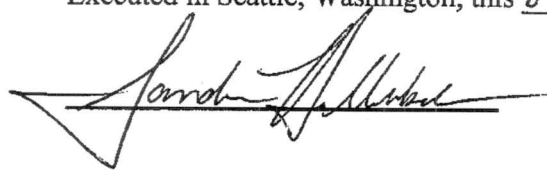
1 misinterpreted Dr. Dompe's prior notes. I explained that STC could provide the rest breaks
2 that Dr. Dompe stated Rahner needed and explained a little more about what the evening shift
3 involved. I worked directly with Suki Dardarian and Mark Higgins to describe the evening
4 shift. Dr. Dompe responded the next day. In unequivocal terms, he stated that Rahner was not
5 suffering from a medical emergency and that he was able to perform the evening shift with the
6 rest break accommodations offered by STC. He did not identify any other accommodations
7 that Rahner needed in order to maintain his health.

8
9 20. Rahner continued to refuse to return to work even after seeking Dr. Dompe's
10 note stating that he could work the evening shift with a rest break accommodation. Rahner
11 stated that he did not intend to return to work if he had to work the evening shift. He refused to
12 even attempt the evening shift with the rest break accommodation STC was willing and able to
13 provide.

14 21. On January 7, 2011, STC notified Rahner that he had not shown up for work
15 several days in a row and that further refusal to report would be considered job abandonment.
16 Rahner did not show up on January 10, 2011. The following day, STC notified Rahner that he
17 had abandoned his job, resulting in separation from employment. A true and correct copy of
18 the letter is attached as **Exhibit F**.

19 I declare under penalty of perjury under the laws of the United States of America that
20 the foregoing is true and correct to the best of my knowledge and belief.

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22 Executed in Seattle, Washington, this 8th day of July, 2013.

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Declaration of Sandra Hollenbeck (2:12-cv-00880) — 7
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Declaration of Sandra Hollenbeck (2:12-cv-00880) — 8
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